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Cases, Regulations, and Statutes

Agricultural Law Digest

Footnotes

1 Treas. Reg. § 1.451-2(a). See Ann. 87-3 I.R.B. 1987-2 (warning about applicability of constructive receipt doctrine to agreements to defer income from 1986 to 1987).

2 Pub. L. 96-471, Sec. 2, 94 Stat. 2247 (1980).

3 I.R.C. § 453(b)(2)(B).

4 *Id*.

5 *Id*.

6 See 4 Harl, Agricultural Law § 25.03[2] (Matthew Bender 1989).

7 I.R.C. § 453(d).

8 I.R.C. § 453(j)(2), added by Pub. L. 99-514, Sec. 812(a), 100 Stat. 2371 (1986).

9 See I.R.C. § 56(a)(6). See Letter from Glenn F. Mackles, Assistant Chief Counsel, Technical, Internal Revenue Service, to Rep. Pat Roberts, May 23, 1989.

10 I.R.C. § 56(a)(6), added by Pub. L. 99-514, Sec. 701(a), 100 Stat. 2320 (1986).

11 Revenue Act of 1987, Pub. L. 100-203, Sec. 10202(d), 101 Stat. 1330-358 (1987), amending I.R.C. § 56(a)(6).

12 *Id*.

13 See I.R.C. § 55(d).

14 *E.g*., J.B. Amend, 13 T.C. 178 (1949), *acq*., 1950-1 C.B. 1, *app. dism'd*, (5th Cir. 4/8/50); Wilfred Weathers, 12 T.C. M. 314 (1953) (oral modification before harvest of prior written contract did not preclude deferral of income tax liability).

15 See Hineman v. Broderick, 99 F. Supp. 582 (D. Kan. 1951) (unsuccessful attempt to defer sale of wheat for seven years; no continuous practice by taxpayer in deferring sales).

16 1958-1 C.B. 234.

17 *E.g*., Rev. Rul. 79-379, 1979-2 C.B. 204.

18 Levno v. United States, 440 F. Supp. 8 (D. Mont. 1977).

19 September 4, 1979.

20 See Warren Jones Co. v. Commissioner, 524 F.2d 788 (9th Cir. 1975), *rev'g and rem'g*, 60 T.C. 663, *nonacq*., 1980-1 C.B. 2.

21 See note 19 *supra*.

22 See Ltr. Rul. 8726007, March 23, 1987.

23 See 7 Harl, *supra* Note 6, § 53.07[2], n. 16.

24 7 U.S.C. § 196. See discussion and cases cited in 10 Harl, Agricultural Law § 71.09[2][c] (Matthew Bender 1989).

25 7 U.S.C. § 196.

ANIMAL OWNER'S LIABILITY

HORSE OWNERS. Summary judgment for horse owner reversed where sufficient evidence was present for jury to find owner had breached duty of reasonable care to protect the injured rider from unreasonable risk of harm. Summary judgment for owner of horse stable where sufficient evidence present for jury to find stable owner breached duty to injured rider to exercise reasonable care to discover conditions which posed unreasonable risks to horse riders. Plaintiff, an inexperienced rider, injured head on overhang when highly trained show horse bolted through open gate in riding arena. **Dolezal v. Carbrey, 778 P.2d 1261 (Ariz. App. 1989).**

ANIMAL PROTECTION AND QUARANTINE

CATTLE AND BISON. The Animal and Plant Health Inspection Service (APHIS) has affirmed its interim rule changing the designation of Florida to an accredited-free state. **54 Fed. Reg. 42945 (October 19, 1989).**

SWINE. APHIS has announced proposed rules governing the identification of swine transported in interstate commerce. The swine must be identified at the the first of the following locations at which the swine arrive-- (1) where first commingled in interstate commerce with other swine, (2) where unloaded in interstate commerce at a livestock market, (3) where ownership is transferred in interstate commerce and (4) the final destination in interstate commerce. **54 Fed. Reg. 43065 (October 20, 1989).**

BANKRUPTCY

GENERAL

ABANDONMENT. Chapter 7 trustee was not allowed to vacate abandonment of real property where trustee failed to show bad faith. After the property was abandoned, the creditor received the full amount of its claim secured by the abandoned property after the debtor obtained another loan from a third party. ***In re* Gracyk, 103 B.R. 865 (Bankr. N.D. Ohio 1989).**

AUTOMATIC STAY. Corporation held not to be "individual" eligible to seek actual and punitive damages for IRS wilfull violation of automatic stay. The court declined to follow Budget Service Co. v. Better Homes of Virginia, 804 F.2d 289 (4th Cir. 1986) and *In re* Randy Homes Corp. 84 B.R. 799 (Bankr. M.D. Fla. 1988) which held that corporations may be considered "individuals" for this purpose. ***In re* Blue Water Bay, Inc., 89-2 U.S.T.C. ¶ 9566 (Bankr. M.D. Fla. 1989).**

IRS was held liable for actual and punitive damages for the wilfull violation of the automatic stay in the seizure of the debtor's personal assets used in the debtor's business where the debtor had informed the IRS of the pending personal and corporate bankruptcy cases and, although the corporation bankruptcy case had been dismissed, the debtor had claimed personal ownership of business assets seized by IRS. Although debtor did not provide IRS with conclusive evidence of personal ownership of business assets, the court held that the IRS had been given sufficient notice of possible ownership to require IRS to end the seizure until further investigation disclosed whether the assets were governed by the automatic stay in the debtor's bankruptcy case. ***In re* Lile, 103 B.R. 830 (Bankr. S.D. Tex. 1989).**

IRS was held liable for actual damages, attorney's fees, for wilfull violation of the automatic stay where IRS sent notice of threatened levy after confirmation of debtors' plan. IRS had filed an allowed claim in the case. Punitive damages not awarded because no actual levy made. ***In re* Price, 103 B.R. 989 (Bankr. N.D. Ill. 1989).**

The FmHA was held to be in violation of the automatic stay when it attempted to offset its claim against the debtors' income tax refund received after the filing of Chapter 12 bankruptcy. ***In re* Ketelseon, 78 B.R. 573 (Bankr. D. S.D. 1987), aff'd on point, 104 B.R. 242 (D. S.D. 1988), aff'd 880 F.2d 990 (8th Cir. 1989).**

CLAIMS. Debtor's obligation under promissory note given to mother held valid where mother had not made written waiver of unpaid interest and principal on note although mother expressed intent not to collect such amounts unless she needed the money. Equipment used by debtor but leased from father were not debtor's property where lease held to be valid. Cattle pastured on debtor's land were held to belong to debtor's father. Although the court noted that these family transactions were poorly documented, the transactions lacked any fraudulent intent to deceive creditors. ***In re* Kempker, 104 B.R. 196 (Bankr. W.D. Mo. 1989).**

EXEMPTIONS. Debtors estopped from avoiding liens as impairing rural homestead exemption in farmland on which they lived on date of filing of petition where debtors had signed homestead disclaimer on deed of trust securing the liens against the farmland. At the time the debtors signed the homestead disclaimer, the debtors resided on leased farmland. The court found that the lender had relied upon the debtors' disclaimer in making the loan. ***In re* Lane, 103 B.R. 816 (Bankr. N.D. Tex. 1989).**

The debtor's vested interest in the debtor's employer's profit-sharing plan and trust was estate property where debtor had emergency access to all funds and unlimited access to funds contributed by debtor. Debtor's interest in employer's profit-sharing plan and trust not exempt where funds not reasonably necessary for support of debtor and debtor's dependents. ***In re* Smith, 103 B.R. 882 (Bankr. N.D. Ohio 1989).**

FARM EQUIPMENT. Equipment used in a Chapter 7 debtors' horse breeding business were not eligible for exemption as implements for domestic use on homestead. Creditor failed to provide evidence that one tractor would not be used other than primarily for domestic use; therefore, the tractor was eligible for the exemption. However, the farm equipment was eligible for the tools of a trade exemption to the extent of $5,000 although the debtors' horse breeding operation operated at a loss and most of debtors' income came from wages from nonfarm employment. ***In re* Cass, 104 B.R. 382 (Bankr. N.D. Okla. 1989).**

FEDERAL INCOME TAX REFUND. The debtor's federal income tax refund was held not eligible for exemption as wages under Fla. Stat. § 222.11. **Matter of Truax, 104 B.R. 471 (Bankr. M.D. Fal. 1989).**

HORSES. Male horses whose value to Chapter 7 debtors in the business of breeding, showing and raising horses was primarily as breeding stock were held not eligible for exemption for horses "held primarily for the personal, family or householde use" of the debtor under 31 Okla Stat. § 1(A)(11). Riding saddles, however, were exempt. ***In re* Cass, 104 B.R. 382 (Bankr. N.D. Okla. 1989).**

IRA'S. Florida exemption for Individual Retirement Accounts (IRA's) not preempted by ERISA, 29 U.S.C. § 1144(a), because IRA not established or maintained by employee organization or employer. ***In re* Ewell, 104 B.R. 458 (Bankr. M.D. Fla. 1989).**

MOTOR VEHICLES. Chapter 7 debtor not allowed exemption in pickup or car in which debtor had no equity. ***In re* Cass, 104 B.R. 382 (Bankr. N.D. Okla. 1989).**

GRAIN FACILITIES. Warehouse receipts held by producers of beans stored in debtor grain storage facility were prima facie evidence of validity and amount of claim of ownership of grain. Purchasers of beans from debtor grain storage facility who did not take delivery of the beans were not entitled to recover beans or proceeds of the beans. Although the purchasers of the beans claimed entitlement under the entrustment provisons of U.C.C. § 2-403(2) and (3), the court held that those provisions were not applicable unless the purchasers took possession of the beans before entrusting them to the grain storage facility. ***In re* Hawkins Co., Ltd., 104 B.R. 317 (Bankr. D. Idaho 1989).**

SETOFF OF CLAIMS. In two cases the Bankruptcy Court for the Southern District of Iowa has on remand held that one federal agency may not claim administrative setoff of its claim against federal farm program payments due to the debtor where the creditor agency failed to initiate setoff prior to the filing of the bankruptcy case and had not obtained approval of the other agency prior to filing of the bankruptcy case. In both cases, the court examined equitable and bankruptcy policy factors in deciding against setoff. The District Court had reversed the Bankruptcy Court's ruling in both cases that the SBA claim and FmHA claim could not be offset because of the lack of mutuality of the agency with the ASCS-CCC but the District Court remanded the cases for consideration of other reasons for denial of the offset.

The Small Business Administration was not allowed to setoff its claim against amounts owed the Chapter 7 debtor by CCC-ASCS under the crop deficiency program where discharge had been granted and such offset would needlessly consume estate assets. **Matter of Mehrhoff, 104 B.R. 125 (Bankr. S.D. Iowa 1989), on rem. from unrep. D. Ct. dec. rev'g and rem'g 88 B.R. 922 (Bankr. S.D. Iowa 1988)**.

The court denied tthe FmHA's objection to a Chapter 12 plan for failure of the plan to provide for setoff of the FmHA's claim against ASCS-CCC payments due to the debtor where the FmHA proof of claim stated that the claim was not subject to a right of setoff and the FmHA had not claimed any right of setoff prior to the confirmation hearing. **Matter of Butz, 103 B.R. 128 (Bankr. S.D. Iowa 1989), on remand from unrep. D. Ct. dec. rev'g and rem'g 86 B. R. 595 (Bankr. S.D. Iowa 1988).**

FEDERAL INCOME TAX

ADMINISTRATIVE EXPENSE. Interest on post-petition taxes incurred by the Chapter 11 bankruptcy estate before conversion to Chapter 7 was allowed administrative expense priority under 11 U.S.C. § 503. ***In re* Allied Mechanical**

Services, Inc., 89-2 U.S.T.C. ¶ 9578 (11th Cir. 1989).

ALLOCATION OF PLAN PAYMENTS FOR TAXES. Although adopting the holding of *In re* Energy Resources Co., Inc., 871 F.2d 223 (1st Cir. 1989), that the bankruptcy court has the equitable power to allocate plan payments among tax claims, whether the payments are considered voluntary or involuntary, the court here refused to make such an allocation because the debtor corporation was liquidating. ***In re* Educare Centers of Arkansas, Inc., 104 B.R. 106 (Bankr. W.D. Ark. 1989).**

DISCHARGE. Penalties for the debtor's failure to file partnership informational returns due within three years of the debtor's filing for bankruptcy were nondischargeable. ***In re* Ferrara, 103 B.R. 870 (Bankr. N.D. Ohio 1989).**

Debtors liaiblity for the 100 percent penalty under I.R.C. § 6672 as a responsible person in corporation which failed to pay employment taxes was a nondischargeable tax under 11 U.S.C. §§ 523(a)(1)(A) and 507(a)(7)(C) and not a penalty which would have been dischargeable because the liability arose more than three years before the debtor filed bankruptcy under 11 U.S.C. § 523(a)(7)(B). ***In re* Matlock, 104 B.R. 389 (Bankr. N.D. Okla. 1989).**

IRS claims for unpaid federal income taxes were not discharged in Chapter 13 case where tax claims listed in debtor's schedules but no provision was made in confirmed plan. **Matter of Ungar, 104 B.R. 517 (Bankr. N.D. Ga. 1989).**

EXEMPTIONS. The secured amount of an IRS claim is determined without regard to property exempt from the bankruptcy estate; however, the tax lien levied against debtor's property was not affected by the exemption. **Matter of Lassiter, 104 B.R. 119 (S.D. Iowa 1989).**

FILING OF CLAIMS. IRS late-filed amendment for over $2 million in unpaid taxes was denied because the amendment was significantly different from the original claim for over $11,000. The existence of an ongoing audit of the tax returns for the tax years subject to the claim did not excuse the IRS failure to seek extension of time to file claims. ***In re* Stavriotis, 103 B.R. 1005 (Bankr. N.D. Ill. 1989).**

IRS late-filed amendment for claim for taxes for additional tax year allowed where claim related to timely filed claim for taxes for previous taxable year and debtor had listed added tax year as priority claim. The court used the equitable considerations listed in *In re* Glamour Coat Co., 80-2 U.S.T.C. ¶ 9737 (S.D. N.Y. 1980). ***In re* Unroe, 104 B.R. 77 (Bankr. S.D. Ind. 1989).**

PENSION PLANS. Debtor had obtained waivers from IRS for an employer's minimum required contribution to a pension plan for 1982 and 1983. The waiver had not been revoked as of the date of the bankruptcy petition, April 16, 1985. The IRS sought retroactive revocation of the waivers because the debtor had failed to meet the minimum contributions for 1984 and 1985. The revocation and assessment of excise tax on the underfunded pension plans were prohibited by the court because the pension plan contribution liability arose pre-petition and could be paid only pursuant to a plan of reorganization. ***In re* Wheeling-Pittsburgh Steel Corp., 103 B.R. 672 (W.D. Pa. 1989).**

TAX LIENS. A federal tax lien attached to the debtors' residence (which was not avoided in bankruptcy) was not invalidated by the discharge of the underlying tax liability in bankruptcy. Tax lien was not avoidable as impairing the debtors' homestead exemption where IRS did not intend to foreclose on lien prior to debtors' sale of residence. ***In re* Leslie, 103 B.R. 775 (Bankr. S.D. W. Va. 1989).**

VOIDABLE PREFERENCES. Return of dairy cattle to brand owner held to be a voidable preference transfer where transfer occurred two days before filing for bankruptcy, brand owner held unsecured interest in cattle and brand owner received more than would be received in liquidation of debtor. ***In re* Brower, 104 B.R. 226 (Bankr. D. N.D. 1988).**

CHAPTER 11

CONFIRMATION OF PLAN. One creditor who had purchased two other creditor's claims grouped in same class in Chapter 11 plan was entitled to two votes in the confirmation voting where the purchase of the claims was not made with any bad faith motive or intent. The creditor, who was a general partner in a partnership in which the debtor was also a general partner, was not an insider. ***In re* Gilbert, 104 B.R. 206 (Bankr. W.D. Mo. 1989)**.

CHAPTER 12

AUTOMATIC STAY. Secured creditors who may have only an unallowed claim were parties in interest entitled to move for lifting of automatic stay against Chapter 12 debtors. Automatic stay terminated for cause where debtors had not filed a confirmable plan in over six months, were solvent, and, according to their filed schedules did not qualify for Chapter 12. ***In re* Novak, 103 B.R. 403 (Bankr. E.D. N.Y. 1989).**

DEBTOR ELIGIBILITY. In determining whether debtors met the farming income test for Chapter 12, income from rental of farmland is "farm income" only if the debtor "had some significant degree of engagement in, played some significant operational role in, or had ownership interest in the crop production which took place in the acreage that they rented." The case was remanded to determine the debtor's amount of participation in the operation of the rented farmland. ***In re* Easton, 883 F.2d 630 (8th Cir. 1989), rev'g and rem'g 104 B.R. 111 (N.D. Iowa 1988) aff'g 79 B.R. 836 (Bankr. N.D. Iowa 1988).**

Debtor was held not eligible for Chapter 12 because less than 50 percent of gross income came from farming. Crop share rental of farmland was held to be income from farming but cash rent of pasture was not because debtor had none of the risks inherent in farming. **Matter of Krueger, 104 B.R. 223 (Bankr. D. Neb. 1988).**

PLAN CONFIRMATION. Chapter 12 plan allowed which provided that debtor redeem Federal Land Bank stock in partial satisfaction of debt to bank. Plan not confirmed where debtor failed to provide sufficient evidence that interest rate of 11.4 percent on payment of deferred claim of bank was equal to market rate for similar loans. The court held that the debtor failed to demonstrate how the interest rates on FmHA loans, Federal Farm

Credit rates and the 30-year treasury bill rate were applicable to a market rate for a 30-year loan involving farmland. ***In re* Wright, 103 B.R. 905 (Bankr. M.D. Tenn. 1989).**

PLAN ENFORCEMENT. Under Chapter 12 plan creditor was to receive debtor's interest in farmland, except homestead, "subject to" land sales contract with third party vendor. The court held that the creditor was required to make its share of the payments under the sales contract under the provisions of the plan and that state law governing "subject to" provisons was not applicable. ***In re* Coleman, 104 B.R. 338 (Bankr. D. Mont. 1989).**

CHAPTER 13

PLANS. Chapter 13 plan allowed to cure arreages in mortgage payments although petition filed after judgment of foreclosure entered but before sale of mortgaged property. ***In re* Masters, 104 B.R. 83 (Bankr. S.D. Ind. 1989).**

CONTRACTS

ORAL CONTRACT. Oral promise of parents to convey farm to son as long as son farmed land and cared for parents enforced where surviving parent admitted contract and son's breach of promise to farm land caused by surviving parent's leasing of land to third party. **Meyer v. Meyer, 775 S.W.2d 561 (Mo. App. 1989).**

ENVIRONMENT

WASTE DISCHARGE. Hog confinement facilty owner fined for discharge of swine waste into stream under Ill. Rev. Stat. ch 111 1/2, ¶ 1012(a)-(f). Owner's claim of lack of knowledge of who dug trench in side of waste lagoon was held not to be a defense because property owners are held liable for pollution which eminates from their land. **Perkinson v. Ill. Pollution Control Bd., 543 N.E.2d 901 (Ill. App. 1989).**

FEDERAL CROP INSURANCE

HIGH-RISK LAND EXCLUSION OPTION. The FCIC has issued its final rule adding 7 C.F.R. § 401.131 on the availability of crop insureds to elect not to insure their high-risk land, effective for the 1990 crop year for the following crops--barley, corn, cotton, ELS cotton, dry beans, grain sorghum, oats, popcorn, rice, rye, safflowers, soybeans, sunflowers and wheat. **54 Fed. Reg. 43272 (October 24, 1989).**

POTATOES. The FCIC has announced an interim rule extending the date of the end of the insurance period for potatoes in Delaware, Maryland and New Jersey from August 15 to October 15. **54 Fed. Reg. 43276 (October 24, 1989), amending 7 C.F.R. § 422.7.**

RAISINS. The Federal Crop Insurance Corporation (FCIC) has announed the final Raisin endorsement to the general crop insurance policy. **54 Fed. Reg. 43273 (October 24, 1989).**

FEDERAL ESTATE & GIFT TAX

BENEFICIARY LIABILITY. Estate beneficiaries held liable for unpaid estate tax where estate insolvent and unlikely to acquire assets sufficient to pay estate tax liability. IRS not required to first send notice of deficiency and assessment to estate. **Nancy J. Gumm, 93 T.C. No. 38 (1989)**.

COMPLETED GIFT. The transfer of property to a trust in which the grantor has the power to revoke, amend or terminate the trust with the consent of an independent trustee was ruled an incomplete gift for federal gift tax purposes. **Ltr. Rul. 8940008, June 29, 1989.**

DISCLAIMERS. A 1979 disclaimer, within two months after trust terminated, of part of a beneficiary's contingent remainder interest in a trust created in 1917 was valid where trust created before gift tax law enacted and value of contingent interest not determinable until trust terminated. **Ordway v. United States, 89-2 U.S.T.C. ¶ 13,802 (S.D. Fla. 1989).** Another beneficiary's disclaimer of a similar contingent interest in the same trust was also valid; however, the court did not find that the disclaimer was timely but rested its decision on the pre-gift tax creation of the trust. **Irvine v. United States, 89-2 U.S.T.C. ¶ 13,818 (D. Minn. 1989).**

GROSS ESTATE. The decedent had created a revocable trust in which the decedent was the sole beneficiary and retained the power to control distributions from the trust. At decedent's death the trust corpus was to be paid to the decedent's estate. IRS ruled that gifts made at the direction of the decedent within three years of death were not includible in the decedent's gross estate under I.R.C. § 2035(a) because the trust corpus was includible in the decedent's estate under I.R.C. § 2033 and not § 2038 because no third party beneficiary was involved in the trust. **Ltr. Rul. 8940003, June 30, 1989.**

MARITAL DEDUCTION. Surviving spouse's life interest in testamentary trust with spendtrift clause eligible for marital deduction. **Ltr. Rul. 8940009, June 29, 1989.**

SPECIAL USE VALUATION. A qualified heirs' donation of a conservation easement to a county preservation board was ruled a disposition causing recapture of special use valuation benefits. **Ltr. Rul. 8940011, June 30, 1989.**

A crop share lease of special use valuation property by a qualified heir to an unrelated third party was ruled to not be a cessation of qualified use of the farmland where the qualified heir (1) participated in management of crop production, (2) was reponsible for maintaining the irrigation equipment, and (3) was responsible for the costs of harvesting and packing the qualified heir's share of the crops, one-fourth of the fertilizer costs and real property taxes. **Ltr. Rul. 8939031, June 30, 1989.**

VALUATION. Valuation of ranch found to equal value used in first two estate tax returns where that value used by executor in probate schedules. Estate could not use value determined by amount of cash received in sale of surviving spouse's sale of life estate to sister where sister had also relinquished her interest in other estate property. **Bank of the West v. Comm, 93 T.C. No. 37 (1989)**.

FEDERAL FARM PROGRAMS

REGULATIONS. The Commodity Credit Corporation has issued final regulations governing the Disaster Payment Program for 1989 created by the Disaster Assistance Act of 1989. **54 Fed. Reg. 40369 (October 2, 1989).**

The CCC has issued final regulations implementing the livestock emergency programs under the Agricultural Act of 1949 and the Disaster Assistance Acts of 1988 and 1989. **54 Fed. Reg. 43941 (October 30, 1989).**

The FmHA has issued interim regulations implementing the guaranteed loan program for rural businesses under the Disaster Assistance Act of 1989. **54 Fed. Reg. 42480 (October 17, 1989).**

REPLANTED ACREAGE. Under the 1989 Act, for producers who replanted a crop for harvest in 1989, disaster payments were to be reduced by an amount reflecting 75 percent of the value of a crop planted for harvest in 1989 to replace the crop for which disaster payments are received. That provision has been amended to remove any deductions if the replacement crop fails to produce more than 50 percent of the county average yield for the replacement crop. The disaster relief payments would only be reduced by 75 percent of the amount which the yield of the replacement crop exceeded 50 percent of the county average yield for the replacement crop. Pub. L. 101-___, Sec. __, ___ Stat. ___ (1989).

INTERMEDIARY RELENDING PROGRAM.

REGULATIONS. The FmHA has proposed amendments to regulations, 7 C.F.R. Part 1948, Subpart C, governing the Intermediary Relending Program. The changes include reducing the maximum loan limitation for one intermediary to $2 million, a point system for determining loan priorities, removal of application time limitations, and removal of requirements for intermediaries to report opportunities provided to farm families. **54 Fed. Reg. 41626 (October 11, 1989).**

1990 TARGET PRICES

Corn $2.75/bu.;Barley $2.36/bu.;Sorghum $2.61/bu.

PRICE SUPPORT

The honey price support program, 7 C.F.R. Part 1434, and the sugar price support program, 7 C.F.R. Part 1435, regulations have been amended to conform the Commodity Credit Corporation price support loan agreement. **54 Fed. Reg. 41588 (October 11, 1989).**

FEDERAL INCOME TAX

DEDUCTIONS. The estimated deductible costs for use in adjusting farm expenses to exclude the cost of producing home-consumed farm produce on 1989 income tax returns as issued by the Iowa State University Extension Service are as follows--

Pork	$35.65 per 100 lbs. liveweight
Beef	$46.70 per 100 lbs. liveweight
Chickens	$0.98 per bird
Eggs	$0.45 per dozen
Milk	$10.10 per 100 lbs. or $0.86 per gallon

FOR PROFIT ACTIVITY. Investors in cattle breeding partnerships were allowed deductions for losses and depreciation and investment tax credit where cattle sales by the partnerships had economic substance as evidenced by sale near fair market value, financing was on a recourse basis, the breeding contracts terms were followed by all parties and the business was intended to make a profit. **Ralph W. Bales, T.C. Memo. 1989-568.**

FOR PROFIT ACTIVITY. An individual's ownership of an undivided interest in a Holstein bull used for breeding purposes was held to be an acitivity engaged in for profit where the individual was knowledgeable and experienced concerning Holsteins, experts were consulted, the sale of semen generated over $400,000 over several years, the breeding contracts with the seller of the bull were bona fide and enforced, and the individual was at risk on the loans used to purchase the interest in the bull. **Bruce G. Persson, T.C. Memo. 1989-567.**

INTEREST. The taxpayers' interest on a loan used to purchase five acres of land to be added to their residence was qualified residence interest under I.R.C. § 163(h). **Ltr. Rul. 8940061, July 12, 1989.**

INVESTMENT INTEREST. Deduction of interest on loans used to purchase bank stock were held subject to the investment interest limitations of I.R.C. § 163(d) where the purchaser was a bank executive but not in the business of buying and seling banks and where the substantial dividends received from the stock indicated an investment purpose. **Paul D. Olson, T.C. Memo. 1989-564.**

STANDARD MILEAGE RATE. The 1989 standard mileage rate for deduction of business use of an automobile is 25.5 cents per mile.

RESPONSIBLE PERSONS. A bankruptcy debtor who was secretary and 50 percent shareholder in several corporations which failed to pay employment taxes was held not to be a "responsible person" liable for the 100 percent penalty under I.R.C. § 6672 where the debtor had no control over the day-to-day financial affairs of the corporation. ***In re* Derickson, 104 B.R. 346 (Bankr. D. Or. 1989).**

SAFE HARBOR INTEREST RATES

November 1989

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	8.39	8.22	8.14	8.08
110%AFR	9.24	9.04	8.94	8.87
120%AFR	10.10	9.86	9.74	9.66
Mid-term				
AFR	8.36	8.19	8.11	8.05
110%AFR	9.21	9.01	8.91	8.85
120%AFR	10.07	9.83	9.71	9.63
Long-term				
AFR	8.32	8.15	8.07	8.01
110%AFR	9.17	8.97	8.87	8.81
120%AFR	10.02	9.78	9.66	9.59

SECTION 451(D) DEFERRAL OF INSURANCE PROCEEDS. Section 451(d) of the Internal Revenue Code of 1986 provides for a one-year deferral of crop insurance proceeds for farmers on the cash method of accounting if the taxpayer establishes that the taxpayer's practice is to report crop income in the following year. The subsection further provides that "...payments received under the Agricultural Act of 1949, as amended, or Title II of the Disaster Assistance Act of 1988 as a result of (1) destruction or damage to crops caused by drought,

flood, or any other natural disaster, or (2) the inability to plant crops because of such a natural disaster shall be treated as insurance proceeds received as a result of destruction or damage to crops."

The Disaster Assistance Act of 1989 did not amend I.R.C. § 451(d). Therefore, it appears that crop disaster payments under the 1989 legislation are not eligible for deferral under I.R.C. § 451(d). A similar problem in the 1988 legislation was remedied by an amendment enacted as a part of the Technical and Miscellaneous Revenue Act of 1988. Legislation is currently pending which would amend I.R.C. § 451(d).

SOCIAL SECURITY TAX. The maximum annual wage subject to social secutiy taxes, i.e., self-employment and FICA, will be $50,400 for 1990.

THEFT LOSS. A partner was not allowed a theft loss deduction for the value of business equipment stolen by the other partner where no evidence of the equipment's basis was provided. **Majestic v. United States, 89-2 U.S.T.C. ¶ 9596 (C.D. Ill. 1989).**

WITHHOLDING TAXES. IRS has provided guidance to employers for reporting on Form W-2, Wage and Tax Statement, amounts paid to employees for business expenses for which the employee does not provide substantiation or does not return any unused portion. Also to be included are amounts in excess of government specified rates (e.g., the standard mileage rate) paid in reimbursement for expenses. **Notice 894, August 1989.**

MORTGAGES

DEFICIENCY JUDGMENT. Creditor met 90 day requirement for filing a separate action for a deficiency judgment by serving debtor with summons and complaint within 90 days after foreclosure and sale of mortgaged property. The court held that Minn. Stat. § 582.20(5)(a) did not also require filing of the deficiency action with the court within the 90 days. **Federal Land Bank of St. Paul v. Bennett, 445 N.W.2d 279 (Minn. App. 1989).**

PRODUCTS LIABILITY

FERTILIZER TANK. Plantiff injured by ruptured hose on anhydrous ammonia tank. Summary judgment for defendant manufacturer upheld where plaintiff failed to present evidence of any design flaw. Plaintiff's use of American National Safety Institute's American National Safety Requirements for Storage and Handling of Anhydrous Ammonia was considered insufficient because the standards were written 13 years after manufacture of the tank. **James v. Swiss Valley Ag. Service, No. 88-1305 (Iowa App. 1989).**

RIPARIAN RIGHTS

DRAINAGE. The court applied the general rule that a landowner, acting in good faith, may drain surface water onto a neighbor's land if (1) the drainage is reasonably necessary, (2) reasonable care is taken to avoid unnecessary damage to the neighbor's land, (3) the benefit from the drainage outweighs the harm caused by the drainage and (4) the drainage improves the natural drainage or provides a reasonable and feasible artificial system. See Enderson v. Kelehan, 226 Minn. 163, 32 N.W.2d 286 (1948). The court upheld the jury verdict as based on sufficient evidence that the defendant farmer's drainage into an artificial drainage system servicing several neighbors' farm land did not cause any damage to the neighbors' property. **Evers v. Willaby, 444 N.W.2D 856 (Minn. App. 1989).**

SECURED TRANSACTIONS

DAIRY TERMINATION PROGRAM PAYMENTS. The debtor's federal Dairy Termination program payments were not proceeds of dairy cattle owned by the debtor and therefore not covered by security agreement listing the dairy cattle and products and proceeds from the cattle. **Bank of North Arkansas v. Owens, 884 F.2d 330 (8th Cir. 1989), aff'g 76 B.R. 672 (E.D. Ark. 1987).** The courts are divided as to this issue. See 13 Harl, Agricultural Law § 118.03[1] n. 17 (Matthew Bender 1989).

DRAGNET CLAUSE. Grant of security interest in property of debtors which covered "all other existing and future indebtedness and obligations of Debtors, . . ." did not cover debtors' guaranty of son's loan from same bank where debtor did not intend security interst to cover guaranty. ***In re* Swanson, 104 B.R. 1 (Bankr. C.D. Ill. 1989).**

PLACE OF FILING. Dairy cattle held to be inventory requiring filing of bank's security interest with Secretary of State where cattle owner in the business of selling cattle through purchase/lease agreements. ***In re* Brower, 104 B.R. 226 (Bankr. D. N.D. 1988).**

LEASE V. SECURITY INTEREST. A lease of dairy cattle was held to be an installment sale financing agrrangement where agreement made in terms of purchaser and seller and price paid for cattle at end of lease far below market value. ***In re* Brower, 104 B.R. 226 (Bankr. D. N.D. 1988).**

SOCIAL SECURITY BENEFITS

BENEFIT LEVELS. 1990 social security benefits and supplement security income payments will increase 4.7 percent over 1989 benefits.

MAXIMUM EARNINGS. The amount of annual earnings allowed for 1990 before benefits are reduced is $9,30 for persons aged 65 through 69 and $6,840 for persons under age 65.

STATE TAXATION

VALUATION. Land leased for grazing of horses used for recreational riding by lessee was openspaced land and qualified for use valuation for assessment of property taxes under Tex. Const. art. VIII, § 1-d-1. The court determined the character of the land by the use of the land and not the use of the livestock. In this case, the land was used for a farming purpose, the feeding of livestock. **Kerr Central Appraisal District v. Stacy, 775 S.W.2d 739 (Tex. App. 1989).**

UNIFORM COMMERCIAL CODE

STATUTE OF LIMITATIONS. Feeder pig producer filed action against hog feed seller for breach of contract and express and implied warranty for sale of feed for lactating sows which did not contain sufficient nutrients or medication. Plaintiff did not specify damages sought. The trial court had dismissed the action because the two-year statute of limitations on products liaibility

actions had run. The Supreme Court held that the petition raised only claims for breach of contract and waranty and that those claims were subject to the U.C.C. statute of limitations, which had not run as of the date the suit was filed; thus, dismissal was improper. **Drew v. United Producers & Consumers Coop., 778 P.2d 1227 (Ariz. 1989).**

WORKERS COMPENSATION

FARM LABORER. Truck driver who delivered crops grown by employer was "farm laborer" excluded from coverage by workers compensation. **Glen Oaks Turf, Inc. v. Butler, 383 S.E.2d 203 (Ga. App. 1989).** For additional cases on truck drivers as farm laborers, see Harl, Agricultural Law § 20.03[4] (MB 1989).

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